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EX PARTE

June 29, 2012

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *In the Matter of Petitions for Waiver of Commission's Rules Regarding Access to Numbering Resources*, CC Docket 99-200; *Connect American Fund, et al.*, Further Notice of Proposed Rulemaking on IP-to-IP Interconnection Issues, WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 07-135; WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45; WC Docket No. 03-109; WT Docket No. 10-208

Dear Ms. Dortch:

On June 27, 2012, Michael Mooney, General Counsel, Regulatory Policy, Sara Baack, Senior Vice President, Voice Services, and the undersigned, of Level 3 Communications, LLC ("Level 3") met with Michael Steffen, Legal Advisor for Chairman Julius Genachowski, Sharon Gillett, Julie Veach, Lisa Gelb and Travis Litman of the Wireline Competition Bureau, to discuss Level 3's concerns about industry-wide discrimination and uncertainty that would be created by a Commission decision to grant voice over Internet protocol ("VoIP") provider petitions ("Petitions") for limited waivers of Section 52.15(g)(2)(i),[1] of the Commission's rules to allow them to obtain numbering resources directly from the North American Numbering Plan Administrator ("NANPA"). Level 3 explained that it believes that granting interconnected VoIP providers access to

[1] 47 C.F.R. § 52.15(g)(2)(i).

numbers on a waiver basis is not in the public interest, and that the Commission should deny the Petitions. If the Commission determines to consider when and under what circumstances it is appropriate to permit VoIP providers direct access to numbering resources, it should seek additional comment and address this critical issue within the context of a comprehensive rulemaking proceeding. Level 3 pointed out that granting VoIP providers direct access to numbering resources would significantly distort what is currently a level playing field. Competitive local exchange carriers ("CLECs") like Level 3 have spent millions of dollars to become state certified carriers, and spend millions more annually to maintain those certifications. One of the benefits to certification is the right to obtain telephone number resources and provide them as part of the CLECs' service offerings. Allowing direct access to numbers to non-carriers which have not made the same, substantial investments in their businesses and the industry would be discriminatory, and would clearly favor the non-carriers receiving waivers over carriers from a cost perspective. If the Commission were to decide to "fix" the current system (that is not presently broken) there may ultimately be "winners" and "losers." But in picking the winners and the losers, the Commission should act through a rulemaking, which is consistent with its long traditional manner of effecting incremental change.

Level 3 also addressed IP interconnection. Level 3 argued that not only would the granting of numbering resources to VoIP providers not facilitate IP interconnection generally, it has the potential to even further discriminate against competitive carriers like Level 3.

Level 3 stated that arguments in this proceeding made by Vonage, other VoIP providers and certain incumbent local exchange carriers ("ILECs") (which ILECs presently refuse IP Interconnection with Level 3) to the effect that granting these Petitions would somehow foster IP Interconnection are red herrings.[2] Level 3 believes that providing VoIP providers direct access to numbers would do nothing to foster, and would likely actually hinder IP Interconnection, particularly as between CLECs and ILECs, which have proven that they have no intention of voluntarily interconnecting on an IP basis with CLECs like Level 3. Level 3 and most other CLECs already connect to ILECs on a time-division multiplexing ("TDM") basis, and pay them millions of dollars monthly for hundreds of thousands of complex TDM access circuits to locations deep

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[2] *See* Letter from Robert W. Quinn, Jr, Senior Vice President, Federal Regulatory, AT&T Services, Inc. to Marlene H. Dortch, Secretary, FCC, CC Docket No. 99-200; *Connect America Fund, et al*, Further Notice of Proposed Rulemaking on IP-to-IP Interconnection Issues, WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 07-135; WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45; WC Docket No. 03-109; WT Docket No. 10-208 (filed May 21, 2012) ("*AT&T May 21 Ex Parte*"); Letter from Ann D. Berkowitz, Director, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 99-200, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208 (filed Jun. 8, 2012) ("*Verizon June 8 Ex Parte*"); *see e.g.*, Comments of Vonage Holdings Corp., CC Docket No. 99-200 (filed Jan. 25, 2012).

within the ILECs networks. This creates an enormous revenue stream for the ILECs and an equally large financial disincentive for them to IP Interconnect with CLECs, as this revenue stream would be jeopardized (as described further below). Furthermore, because of the presently uncertain regulatory environment around IP interconnection, ILECs can point to that uncertainty to refuse to IP interconnect with CLECs like Level 3 today.[3]

However, VoIP providers have no imbedded base of TDM business with the incumbents, and therefore, there is not the same revenue downside to incumbents IP interconnecting with VoIP providers. Level 3 argued that if non-carriers get access to phone numbers (particularly before the Commission clarifies its rules on IP Interconnection) the ILECs could view that as an opportunity to interconnect on an IP-basis with these non-carriers without any Commission or state oversight whatsoever. Although fully consistent with the ILECs' advocacy that IP interconnections should be completely unregulated,[4] this would do nothing to foster the Commission's goal of ubiquitous IP interconnection.

Making matters worse, where IP interconnection is implemented, traffic can generally be aggregated and exchanged over a few interconnection points nationwide, and therefore much more economically and efficiently than over TDM interconnections. Thus, if VoIP providers with numbering resources could efficiently interconnect on an IP basis with the ILECs, whereas CLECs were refused such IP interconnection, the CLECs' cost position as compared to the VoIP providers would be worsened even further. The CLECs would, instead of such interconnection efficiencies, be stuck paying the ILECs for far less efficient and far more expensive TDM architectures, even for the delivery of VoIP services. All of the above, among other things, evidences why Level 3 and others have said, in the context of the Commission's *FNPRM*, that the ILECs should not be allowed to unfairly discriminate in their deployment of IP interconnections.

Level 3 stated that IP interconnection, and all of the rules around it, should be dealt with holistically as part of the Commission's *FNPRM*. Level 3 fears that granting non-carriers access to phone numbers could pave the way for additional regulatory uncertainty, discrimination and expense in the IP interconnection space.

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[3] The Commission is in the process of investigating how IP interconnection should be governed in an *FNPRM*. *See In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform—Mobility Fund,* Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, and WT Docket No. 10-208, at ¶¶ 1335-1402 (rel. Nov. 18, 2011) ("*CAF* Order" and "*FNPRM*") (requesting further comment on IP-to-IP interconnection issues).

[4] *See, e.g., AT&T May 21 Ex Parte*, at 2; *Verizon June 8 Ex Parte*, at 2.

Level 3 also addressed its concerns about number exhaust, and call routing issues. This included its concerns about how local routing numbers will be correctly assigned to a VoIP provider so that calls can be routed to them, as opposed to their CLEC or CMRS numbering partner. Level 3 noted that this issue has not been sufficiently addressed by any petitioner in the current record.

Level 3 also stressed that while number portability is a fundamental expectation of American businesses and consumers, there are currently no rules requiring one-way VoIP providers to port telephone numbers.[5] Level 3 added that while two-way interconnected VoIP providers have legal obligations to port numbers, those who have filed for waivers have not explained how they intend to comply with these rules if they are given access to numbers directly. The only guidance provided by the Commission in this regard deals with the obligations of VoIP providers and their numbering partners.[6] Most non-carriers to Level 3's knowledge have no network, and insufficient number portability systems or processes (without the ability to coordinate those processes with those of carrier or CMRS numbering partners).

Level 3 reinforced, as also recognized by the National Telecommunications Cooperative Association ("NTCA"),[7] that the Commission made clear in the *CAF Order*

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[5] The Commission's recent *Public Notice* does not discern whether it intends to grant waivers only to two-way interconnected VoIP providers. It's language merely states that it seeks to "refresh the record on numerous petitions for limited waiver of section 52.15(g)(2)(i) of the Commission's rules to allow the requesting **Voice over Internet Protocol** [emphasis added] (VoIP) providers direct access to numbering resources from the North American Numbering Plan." *Wireline Competition Bureau Seeks to Refresh Record on Petitions for Waiver of Commission's Rules Regarding Access to Numbering Resources, Pleading Cycle Established*, Public Notice, CC Docket No. 99-200, DA 11-2074 (Dec. 27, 2011) ("*Public Notice*") at 1.

[6] *See Telephone Number Requirements for IP-Enabled Services Providers et al.*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, WC Docket Nos. 07-243, 07-244 and 04-36, CC Docket Nos. 95-116 and 99-200, at ¶ 20 (rel. Nov. 8, 2007) ("*VoIP LNP Order*"). Level 3 also noted that while these obligations are legally independent, in reality, they *require* two-way interconnected VoIP providers to partner with a CMRS provider or a wireline carrier to obtain the NANPA numbers necessary to serve their customers, and that CLEC and CMRS VoIP provider numbering partners have relied upon the Commission's decision to foster a regulatory regime where "both an interconnected VoIP provider and its numbering partner must facilitate a customer's porting request to or from an interconnected VoIP provider." *Id.*

[7] *See* Letter from Michael R. Romano, Senior Vice President - Policy, National Telecommunications Cooperative Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC

that VoIP providers cannot block calls, recognizing that one-way and interconnected VoIP providers have the capability to do so.[8] Surprisingly, the VON coalition, which includes Vonage and AT&T, has appealed these call blocking rules as applied to VoIP providers, arguing that the Commission "failed to articulate a rational explanation grounded in record evidence in adopting the No Blocking obligation, rendering its action arbitrary, capricious and an abuse of discretion . . . ."[9] It is not difficult to articulate reasons why those providing telephone service should not be permitted to block phone calls, but as Level 3 pointed out, apparently, Vonage, and presumably other VoIP providers who have filed Petitions and are members of VON, want direct access to phone numbers and the right to block telephone calls. This is precisely the kind of inconsistency that can result from ad hoc decision-making.

Finally, Level 3 discussed its concerns about intercarrier compensation. CLECs are entitled as carriers to intercarrier compensation for their handling of other carriers' traffic, including VoIP traffic. Level 3 stated that it and all other carriers are in the midst of implementing the recently adopted *CAF Order*. Granting VoIP providers direct access to numbers would create yet another avenue to fashion reasons to dispute VoIP bills for intercarrier compensation, even under the *CAF Order*, which was designed to create certainty, not ambiguity, on compensation for VoIP traffic. Level 3 noted that it is currently in the midst of fighting disputes with two large ILEC interexchange carriers who are refusing to pay intercarrier compensation for VoIP traffic. Unless and until these VoIP disputes are resolved and carriers begin to pay according the Commission's rules as written, granting VoIP providers access to numbers will only exacerbate these VoIP dispute issues.

Docket No. 05-337; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208; *Vonage Holdings Corp. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources*, CC Docket No. 99-200 (filed May 31, 2012) at 2.

[8] *CAF Order* at ¶ 974.

[9] *See* "Consumer Protection Matters to the VON Coalition . . . Sometimes," Michael R. Romano (Feb., 1, 2012), *available at* http://www.ntca.org/new-edge/policy/consumer-protection-matters-to-the-von-coalition-sometimes, stating that VON Coalition seeks review of the portions of the *CAF Order* that impose an obligation not to block calls on providers of two-way interconnected Voice Over Internet Protocol (VoIP) and one-way VoIP services, citing *The Voice on the Net Coalition v. Federal Communications Commission and the United States of America*, Docketing Statement, (filed January 18, 2012 (Tenth Circuit).

Taking all of these matters as a whole, we do not see how any petitioner has satisfied its heavy burden to demonstrate that special circumstances warrant deviation from the Commission's rules and that such deviation will not harm the public interest. As required by Section 1.1206(b), this *ex parte* notification is being filed electronically for inclusion in the public record of the above-referenced proceedings. Please direct any questions regarding this matter to the undersigned.

Sincerely,

/s/ *Erin Boone*

Erin Boone

cc: Michael Steffen
Sharon Gillett
Julie Veach
Lisa Gelb
Travis Litman